

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KEVIN M. DONNELLY (d/b/a Catwalk)	
Productions, d/b/a Catwalk Records),)	
An Individual,)	
)	
Plaintiff,)	
)	Case No. 08C 1256
v.)	
)	Assigned Judge: Judge NORGLÉ
WOLF RECORDS, HANNES FOLTERBAUER)	
)	Designated
co-Defendants.)	Magistrate Judge: Judge ASHMAN
_____)	

PLAINTIFF'S AMENDED MOTION FOR DEFAULT JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION

Plaintiff, KEVIN M. DONNELLY ("Donnelly"), by and through his counsel, Andresen & Associates, P.C., respectfully requests that this honorable court enter a judgment and issue a permanent injunction against co-Defendants WOLF RECORDS and HANNES FOLTERBAUER (collectively, the "Defendants") resulting from the Defendants' default on or before August 4, 2008. In support of this motion, Donnelly states as follows:

1. Donnelly filed his Complaint in the present action on March 3, 2008.
2. Donnelly forwarded Notice of Lawsuit and Request for Waiver of Service of Summons forms to all of the Defendants on or about March 4, 2008.
3. Former Defendant Joanne Larson was dismissed from the present action without prejudice pursuant to a *Settlement Agreement and Mutual Release* executed on or about August 22, 2008.
4. As a courtesy and in an attempt to resolve this action, a copy of the Notice of Lawsuit and Request for Waiver of Service was also forwarded Defendants Wolf Records

(“Wolf”) and Hannes Folterbauer (“Folterbauer”) via electronic mail. Defendants Wolf and Folterbauer acknowledged receipt of same by engaging in settlement discussions with Donnelly’s counsel, Scott A. Andresen.

5. Despite full knowledge of the present action and despite repeated requests from Donnelly’s counsel, no executed Waiver of Service of Summons was ever received from Defendants Wolf or Folterbauer.

6. Donnelly undertook service of process upon the United States-based representative of Defendants Wolf and Folterbauer, Joanne Larson. Service was effected upon Wolf and Folterbauer via Joanne Larson on July 15, 2008 at 2:15 pm at 722 Grand Avenue, Chicago, IL 60610.

7. Despite being properly served on July 15, 2008, Wolf and Folterbauer have failed or refused to plead or otherwise defend in this action as of the filing of this Motion.

8. Donnelly respectfully requests that judgment pursuant to Federal Rule of Civil Procedure 55 be entered against the Defendants in the amount of \$450,000.00 in statutory damages, \$11,866.08 in court costs and legal fees incurred as of August 1, 2008, and any and all fees and costs incident to the enforcement of the judgment against the Defendants in the United States and Austria. The statutory damages amount is supported by the provisions of the Copyright Act of 1976 (as amended), 17 U.S.C. §501 et seq., and the Defendants’ knowing and willful infringement of Donnelly’s copyrighted materials. Donnelly also respectfully submits that the maximum statutory damages are appropriate and necessary to punish Defendants for their past intentional and malicious conduct and to deter Defendants from engaging in the same conduct in the future. The fees and costs are supported by the facts contained in the accompanying affidavit of counsel for Donnelly, Scott A. Andresen.

9. Donnelly respectfully requests that, in full or partial satisfaction of any damages awarded to Donnelly by this Court pursuant to Paragraph 8 above, any and all monies, holdbacks, cash reserves and the like held, possessed or controlled by any United States-based distributors, manufacturers or vendors of any of the Defendants or any and all persons acting in concert with or affiliated with any of the Defendants which would otherwise be payable to the Defendants, be immediately surrendered to Donnelly through his counsel, Andresen & Associates PC, at 3025 North California Avenue, Suite 4 S.E., Chicago, Illinois 60618-7009, upon written request by said counsel for same.

10. Donnelly respectfully requests that this Court enter a permanent injunction requiring the following:

- a) That co-Defendants Wolf Records and Folterbauer, their agents, employees, successors, assigns, distributors, and any and all other persons or entities acting in concert with or affiliated with them, be permanently enjoined and restrained from copying, reproducing, manufacturing, duplicating, disseminating, distributing, or otherwise using any portion of Donnelly's copyrighted album, *The Soul of Lefty Dizz* (Copyright No. SR 92 766), namely any actual or derivative sound recordings of the songs *Bad Avenue*, *I Could Get My Hands on You*, *Cloudy Weather*, *I Found Out*, *Chips Flying Everywhere*, *Sure Had a Wonderful Time*, *Woke Up This Morning*, *The Dozens* and *Can't Make Love Alone*, including without limitation as they are contained on Defendants' albums *Chicago's Best West- and Southside Blues Singers Volume 2* and *Lefty Dizz/Carlos Johnson, The Healer*;
- b) That co-Defendants Wolf Records and Folterbauer, their agents, employees, successors, assigns, distributors, and any and all other persons or entities acting in concert

with or affiliated with them, be permanently enjoined and restrained from copying, reproducing, manufacturing, duplicating, disseminating, distributing, or otherwise using any portion of Donnelly's copyrighted song, *Movin' In On You* (aka *The Dozens*) (Copyright No. Pau 785 985), including without limitation as it is contained on Defendants' albums *Chicago's Best West- and Southside Blues Singers Volume 2* and *Lefty Dizz/Carlos Johnson, The Healer*; and

c) That co-Defendants Wolf Records and Folterbauer be ordered to file, within 30 days of the issuance of the injunction and/or order of impoundment requested above, a sworn report setting forth in detail the manner in which they have complied with the injunction and/or order of impoundment.

11. Donnelly respectfully requests that, in the furtherance of any permanent injunction granted pursuant to Paragraph 10 above, that this Court order that any and all copies of Defendant's albums *Chicago's Best West- and Southside Blues Singers Volume 2* and *Lefty Dizz/Carlos Johnson, The Healer*, as well as any masters, tapes or other means by which such copies may be reproduced, which are in the possession custody or control of the Defendants, any United States-based distributors, manufacturers or vendors of any of the Defendants, and any and all persons acting in concert with or affiliated with any of the Defendants, be immediately surrendered to Donnelly through his counsel, Andresen & Associates PC, at 3025 North California Avenue, Suite 4 S.E., Chicago, Illinois 60618-7009, upon written request by said counsel for same.

Respectfully submitted,



Attorney For Plaintiff

This 22nd day of August, 2008

Scott A. Andresen, Esq.
(Illinois ARDC No. 6269335)

ANDRESEN & ASSOCIATES, P.C.
3025 North California Avenue
Suite 4 S.E.
Chicago, Illinois 60618-7009
Telephone: (773) 572-6049
Facsimile: (773) 572-6048

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of August, 2008, that I electronically filed the foregoing document with the Clerk of the United States District Court for the Northern District of Illinois using the CM/ECF system. I further hereby certify that I caused a true and correct copy of the foregoing **PLAINTIFF'S AMENDED MOTION FOR DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION** to be served upon the following non-CM/ECF participants via United States First Class Mail and electronic mail:

HANNES FOLTERBAUER
via Joanne Larson (U.S. Based Representative)
722 Grand Avenue, Chicago, IL 60610

WOLF RECORDS
via Joanne Larson (U.S. Based Representative)
722 Grand Avenue, Chicago, IL 60610



Attorney For Plaintiff